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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,339	03/27/2002	David Malcolm Lewis	CM2200	1455

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EXAMINER

EINSMANN, MARGARET V

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10089,339	Applicant(s) LEWIS ET AL	
Examiner Margaret Einsmann	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Applicant's amendment of 11/12/03 has been entered and applicant's remarks carefully considered.

The rejections of claims 1-27 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention as set forth in the previous office action have been mooted by applicant's claim amendments.

The rejection of claims 12-17 under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101 has been mooted by applicant's claim amendments.

The objection to Claim 22 under 37 CFR 1.75 as being a substantial duplicate of claim 1 has been mooted by the cancellation of claim 22.

In pointing out the basis for the claim limitations, applicant is required to refer to the page and line of the originally filed application, not to the paragraph of the published application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2, 4-18, 20, 21, 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Plant et al., US 4,092,478. Plant discloses fiber-reactive triphendioxazine chromophores bonded to a triazine ring which is further substituted with phenyl phosphonic acid or naphthyl phosphonic acid, See col 4 to col 6. The dyes disclosed by Plant correspond to the claimed dyestuffs in the following manner:

- (a) the chromophore is triphendioxazine
- (b) the nitrogen containing heterocycle is triazine
- (c) the linking group which links the chromophore to the nitrogen-containing heterocycle is NH or NR₁ as claimed. See the dyestuff claimed in claim 8 in col 23 and 24. The method of making the dye is the same as claimed in claim 18 as disclosed in col 5 line 37 et seq.

The pH range of 5.5 for the reaction is disclosed at the top of column 6. The use of said dyes to dye cellulose, wool, polyamide, silk, hair and leather is taught at col 9 lines 50 et seq.

Response to Arguments

Applicant first argues the preferred embodiments of the claims. Dyes comprising the preferred Y group of claim 3 have not been rejected. Regarding the dyes included in the newly added limitation, the dyes of Plant are not excluded by that limitation, which says, "IF the phosphonate derivative is selected from phosphonates having the formula-O-(P=)(OH)R' ..." Plant's dyes have the phosphonate derivative phenyl-PO₃H₂ which is not excluded by the proviso. The dyes excluded by the proviso are a derivative of the formula -PO₄H₂. Accordingly the rejection is maintained.

Claims 1,2, 4-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Crabtree et al., 4,139,345. See dyestuffs 27,32 and 33 in columns 7 and 8. Crabtree discloses fiber-reactive dyestuffs comprising chromophores which contain the sodium salt of phenylphosphoric acid. In dye 27 the chromophore is an azo dye; it is linked to the triazine by NH; in dye 32 the chromophore is triphenyldioxazine which is linked to the chromophore by NH. Said dyes are used to dye cellulose.

Response to Arguments

Applicant argues that the dyes of Crabtree are excluded by the newly added limitation. However, the dyes of Crabtree are not excluded by that limitation, which says, "IF the phosphonate derivative is selected from phosphonates having the formula-O-(P=)(OH)R' ..." Plant's dyes have the phosphonate derivative phenyl-PO₃H₂ which is not excluded by the proviso. The dyes excluded by the proviso are a derivative of the formula -PO₄H₂. Additionally in the proviso R' is any suitable nucleophilic moiety, and applicant states on page 17 of the response that the dyes of Crabtree do not contain a suitable nucleophilic group. This is further evidence that the dyes of Crabtree are not excluded by the proviso. Accordingly the rejection is maintained.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the originally claimed subject matter, the preferred dyes are selected from **polyphosphonates** having the formula $O(P=O)(OH)R$. That does not give basis for the newly added proviso which states, "if the phosphonate derivative is selected from **phosphonates** having the formula $O(P=O)(OH)R$."

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.

January 14, 2004


Margaret Einsmann
Primary Examiner
Art Unit 1751